

This letter describes a situation in which the Department refuses to sanction a taxpayer's arrangement for fixing the location of certain purchases for local tax purposes. (This is a PLR).

November 22, 2002

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>), is in response to your letter of July 9, 2002. We apologize for the delay in responding to your inquiry. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to PURCHASING SUB for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither PURCHASING SUB nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, PURCHASING SUB, we respectfully request the Illinois Department of Revenue to issue a private letter ruling pursuant to 2 Ill. Adm. Code §1200.110 with respect to the following factual situation. We request a ruling that, based on the following facts, the Municipal Retailers' Occupation Tax will be incurred in the home rule municipality of 'CITY,' Illinois, and not in any other local jurisdiction, under the rule set forth in 86 Ill. Admin. Code §270.115(b)(1) and related authority.

Parties to the Transactions

PURCHASING SUB ('Purchasing Sub'), is a STATE limited liability company that will act as a central procurement source for taxable purchases made by its parent company and affiliates. Purchasing Sub will carry out its procurement activities at ADDRESS, CITY, Illinois. An unrelated entity, BBB, will provide this office space for a nominal monthly fee of \$100.

In addition, Purchasing Sub will enter into an Administrative Services Agreement with Inspired Development to maintain Purchasing Sub's office in CITY, Illinois, and to provide limited administrative services for Purchasing Sub's benefit. Purchasing Sub may pay Inspired Development a nominal monthly fee for those services. An unexecuted copy of the Administrative Services Agreement is attached as Exhibit A.

CCC has its principal place of business at CITY, Illinois, CCC does business in Illinois under the name EEE.

Purchasing Sub is a single-member limited liability company. CCC is its only member.

Statement of Material Facts

Purchasing Sub will serve as a central purchasing entity for taxable purchases made by CCC and its affiliates. Purchasing Sub is engaged in the business of selling supplies and capital equipment to CCC and its affiliates. Purchasing Sub and CCC have determined that this arrangement may provide benefits to CCC including, but not limited to, minimizing Home Rule taxation of CCC.

To achieve this benefit, Purchasing Sub will purchase from CCC substantially all of the tangible personal property requirements (generally equipment and supplies) of CCC and resell those items to CCC for its use and consumption and not for further resale. It is expected that essentially all of the tangible personal property purchased by Purchasing Sub will be resold to CCC for its use and consumption. Only a *de minimis* amount, if any, will be retained by Purchasing Sub for use in its business, and no ruling is requested with respect to any such purchases retained by Purchasing Sub for its own use.

Purchases of tangible personal property will be initiated by CCC's issuance of a purchase order to a vendor in CCC's name. A sample of CCC's standard purchase order form is attached hereto as Exhibit B. CCC will provide the vendor with a Resale Certificate (Form CRT-61) with respect to the transaction, which will state that CCC is purchasing the tangible personal property for the purpose of resale and not for its own use or consumption. Delivery of all property from the vendor will be directed to the locations in Illinois specified in the purchase order. Upon acceptance of a purchase order by a vendor, CCC will have agreed to purchase the tangible personal property from the vendor. However, CCC will immediately transfer the ownership of that tangible personal property to Purchasing Sub under the terms of a Wholesale Master Sale Agreement between CCC and Purchasing Sub (the 'Wholesale Master Sale Agreement'). An unexecuted copy of the Wholesale Master Sale Agreement is attached to this ruling request as Exhibit C.¹

Pursuant to the Wholesale Master Sale Agreement, at least once each month, CCC will generate a report (a 'Monthly Report') that lists the items which CCC has ordered and purchased from third-party vendors. Under the Wholesale Master Sale Agreement, ownership of each of the listed items in the Monthly Report will be transferred from CCC to Purchasing Sub at the moment that CCC is considered to become the owner of the items (i.e., when ownership passes from a vendor to CCC). Purchasing Sub will provide CCC with a Resale Certificate with respect to all of such purchased items, which will state that Purchasing Sub is purchasing the items for the purpose of resale and not for its own use or consumption.

At a future date, Purchasing Sub may purchase equipment and supplies for resale to CCC directly from the vendors and not from CCC. At this time, however, purchases by CCC from the vendors will avoid the costs and operational inconvenience of conversion

¹ Note that all agreements between Purchasing Sub and CCC are subject to the approval of the Illinois Department of Insurance.

to using Purchasing Sub as the primary contact with the vendors. No ruling is sought with respect to the possible future situation where purchases are made by Purchasing Sub directly from the vendors.

Purchasing Sub and CCC will also enter into a Master Resale Agreement (the 'Master Resale Agreement'), which sets forth the general procedures, terms and conditions for the repurchase of tangible personal property by CCC from Purchasing Sub. The Master Resale Agreement will be executed by Purchasing Sub at the office it maintains in CITY, Illinois. An unexecuted copy of the Master Resale Agreement is attached as Exhibit D.

Pursuant to the Master Resale Agreement, at the time of delivering each Monthly Report to Purchasing Sub, CCC will provide Purchasing Sub with an Invitation to Bid upon the sale, to CCC, of the goods listed in Monthly Report. It is expected that Purchasing Sub ordinarily will accept the Invitation to Bid in its entirety, and will execute and deliver to CCC an Unconditional Offer to Sell those supplies listed in each Monthly Report. The Master Resale Agreement provides that the price at which the items listed in the Monthly Report are offered for sale by Purchasing Sub to CCC will not be less than the original amount paid by CCC to the original vendors for such items. A sample specimen of an Invitation to Bid and a sample specimen of an Unconditional Offer to Sell, which will be used for this purpose, are attached hereto as Exhibit E and Exhibit F.

Under the terms of the Master Resale Agreement, CCC may accept or reject the Unconditional Offer to Sell made by Purchasing Sub, and the procedures by which CCC may accept or reject the Unconditional Offer to Sell are strictly limited to those specified in the Master Resale Agreement. The Master Resale Agreement provides that CCC may accept the offer by signing the offer and returning it not more than thirty days from the making of the offer to Purchasing Sub at the office it maintains in CITY, Illinois. An Unconditional Offer to Sell signed by CCC will be effective only when properly executed by CCC and presented to Purchasing Sub at the office it maintains in CITY, Illinois.

The Master Resale Agreement provides that Purchasing Sub will hold title to the purchased goods and that title will not transfer from Purchasing Sub to CCC until (1) full payment of the consideration is received by Purchasing Sub, (2) Purchasing Sub has physically received, in CITY, CCC's acceptance of Purchasing Sub's complete and unconditional offer to sell, (3) an officer of Purchasing Sub has verified that CCC's acceptance was proper under the terms of the Master Resale Agreement, and (4) CCC has taken physical possession of the equipment and supplies.

The Master Resale Agreement provides that each Invitation to Bid and Unconditional Offer to Sell will be made not only for the equipment and supplies listed on the Monthly Report transmitted with the Invitation to Bid, but also with respect to equipment and supplies purchased in the routine course of business which are acquired by Purchasing Sub (i.e., purchased by CCC and deemed immediately resold to Purchasing Sub pursuant to the Wholesale Master Sale Agreement) where use or consumption by CCC commences prior to the issuance of the next Monthly Report.

Purchasing Sub has officers but no employees. The activities of Purchasing Sub in CITY, Illinois, will be performed by one of Purchasing Sub's officers (the 'Reviewing Officer') at the office it maintains in CITY. Purchasing Sub's Reviewing Officer may also be an employee of CCC. The Reviewing Officer typically will receive and review the

Monthly Report and Invitation to Bid, prepare and send the Unconditional Offer to Sell to CCC, and receive, review and validate the offer to sell as executed and accepted by CCC. In addition, the Reviewing Officer will provide potential procurement fraud detection for Purchasing Sub.

Purchasing Sub will physically receive the accepted offers in CITY, and the Reviewing Officer will validate that the offer was properly accepted by CCC (i.e., that the signature affixed to the offer was that of a designated responsible officer or employee of CCC), and that it was received by Purchasing Sub in CITY prior to the expiration of the offer period. Upon the Reviewing Officer's validation, the binding contract of sale is created between the parties (pursuant to the Master Resale Agreement and Article 2 of the Uniform Commercial Code). The Reviewing Officer will notify CCC of Purchasing Sub's validation of CCC acceptance of the Unconditional Offer to Sell.

Purchasing Sub also will enter into a separate Administrative Services Agreement with CCC, pursuant to which CCC personnel will provide administrative services to Purchasing Sub. Purchasing Sub's office in CITY. An unexecuted copy of the CCC Administrative Services Agreement is attached as Exhibit G.

Pursuant to the Wholesale Master Sale Agreement, CCC invoices Purchasing Sub for the items listed in each Monthly Report which CCC sells to Purchasing Sub. Pursuant to the Master Resale Agreement, Purchasing Sub invoices CCC for those items listed in the Monthly Report which are resold to CCC, and these invoices will include Retailers' Occupation Tax. The invoices are satisfied through intercompany accounts payable and accounts receivable.

Purchasing Sub will compute the appropriate amount of Retailers' Occupation Tax based on the selling price to CCC (which will never be less than original price paid to CCC's vendors), and based on the final sale being made in CITY. Purchasing Sub will remit the proper amount of tax to the Department of Revenue (the 'Department') on its Form ST-1, Retailers' Occupation Tax return. CCC will fund these payments of Retailers' Occupation Tax through payment of the purchase price including taxes to Purchasing Sub.

Purchasing Sub will file the authorization described in Section 11 of the Retailers' Occupation Tax, which authorizes the Department to disclose to CITY the amount of monthly Retailers' Occupation Tax payments made by Purchasing Sub reported as sales made in CITY.

CITY and Inspired Development have entered into an agreement pursuant to which CITY has retained Inspired Development to attract retail business to CITY. A portion of the Retailers' Occupation Tax revenue received by CITY which is generated from business Inspired Development attracts to CITY will be paid to Inspired Development as compensation for its services and to retailers such as Purchasing Sub as an incentive to locate their operations in CITY.

Ruling Requested

Based upon the foregoing facts, the following private ruling is requested:

Purchasing Sub's receipt in CITY of CCC's acceptance of Purchasing Sub's complete and unconditional offer to sell the specified goods, conclusively establishes CITY as the situs of the sale for Illinois Retailers' Occupation Tax purposes and Municipal Retailers' Occupation Tax purposes, so that the state and local tax rate in effect in CITY, to the exclusion of any other taxing jurisdiction, applies to the sale.

Relevant Authorities

An Illinois home rule municipality, including CITY, may impose a Municipal Retailers' Occupation Tax on companies engaged in selling at retail within the municipality. 65 ILCS 5/8-11-1; see also 86 Ill. Admin. Code §270.101(a) and 270.115(a)(1). CITY has not imposed a local MROT. The Department of Revenue is required to collect and administer the MROT, including one percent of the statewide rate of 6.25 percent which is redistributed to the local government from which the sale originated.

The Department's own regulations state that the Department considers the seller's acceptance of the purchase order the single most important factor in the occupation of selling. The regulations provide that if Purchasing Sub accepts a purchase order, constituting an acceptance of its complete and unconditional offer to sell, at its place of business in CITY, Purchasing Sub will incur Home Rule Municipal Retailers' Occupation Tax liability in CITY if the sale is at retail, and the purchaser receives physical possession of the property in Illinois. The same treatment applies where the purchase order is accepted by someone working out of Purchasing Sub's place of business in CITY.

86 Ill. Admin. Code §270.115(b)(1) explicitly states:

'[I]f a purchase order which is an acceptance of seller's complete and unconditional offer to sell is received by seller's place of business within the municipality or by someone working out of such place of business, seller incurs Municipal Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.'

Pursuant to this regulation, the receipt in CITY by Purchasing Sub of its offer to sell, executed by CCC and effective upon acceptance at Purchasing Sub's office in CITY, will establish CITY as the situs of the sale for purposes of the Municipal Retailers' Occupation Tax. (See Private Letter Ruling ST-01-0003 for direct support for the proposition that the acceptance of offer to sell by an agent will establish the situs of the sale.)

The Department has issued a number of private letter rulings that illustrate the application of 86 Ill. Admin. Code §270.115(b)(1). See Private Letter Ruling ST-01-0003; Private Letter Ruling ST-00-0020, Private Letter Ruling ST-91-0162, Private Letter Ruling ST-90-0857, Private Letter Ruling ST 87-0340, Private Letter Ruling ST-87-0262, Private Letter Ruling ST-83-0579, Private Letter Ruling ST-82-0405, Private Letter Ruling ST-81-1566.

Purchasing Sub knows of no authority contrary to the above-cited authorities.

Conclusion

The facts indicate that (1) Purchasing Sub will acquire and hold title to goods acquired with the intent to resell, (2) Purchasing Sub and CCC will enter into a Wholesale Master Sale Agreement and a Master Resale Agreement that provide the terms and conditions upon which the goods are sold from Purchasing Sub to CCC, (3) the sales will be conducted by Purchasing Sub's making of complete and unconditional offers to sell, (4) CCC's acceptance of Purchasing Sub's complete and unconditional offer to sell will be physically received by Purchasing Sub in CITY, Illinois, (5) the physical receipt in CITY of CCC's properly executed acceptance of Purchasing Sub's complete and unconditional offer to sell will give rise to the contract of sale under both the terms of the Master Resale Agreement and the Uniform Commercial Code, and (6) CCC as final purchaser will receive physical possession of the property in Illinois. The Department's regulation, 86 Ill. Admin. Code §270.115(b)(1), and numerous prior private letter rulings indicate that under these facts, the sales of tangible personal property by Purchasing Sub to CCC are subject to Retailers' Occupation Tax at the rate in effect in CITY, Illinois.

Therefore, we respectfully request that the Department issue a ruling confirming that the receipt, by Purchasing Sub in CITY, of CCC's acceptance of Purchasing Sub's complete and unconditional offer to sell, will conclusively establish CITY as the proper situs of the sale for Retailers' Occupation Tax purposes such that the state and local tax rate in effect in CITY, to the exclusion of any other taxing jurisdiction, will apply to those sales.

General Information

Enclosed please find an original Form IL-2848 Power of Attorney, authorizing PERSON to represent Purchasing Sub before the Illinois Department of Revenue.

This Private Letter Ruling is not requested with regard to hypothetical or alternative proposed transactions, but rather is requested to determine the Retailers' Occupation Tax consequences of the actual business practice to be implemented by Purchasing Sub.

Neither Purchasing Sub nor CCC is currently engaged in litigation with the Department with regard to this or any other tax matter, nor is Purchasing Sub or CCC currently under audit by the Department with regard to Retailers' Occupation Tax or Use Tax matters.

To the best of our knowledge, the Department has not previously ruled regarding this matter for Purchasing Sub. Neither Purchasing Sub, nor we on their behalf have, at any time prior, submitted the same or similar issue to the Department.

Purchasing Sub requests that certain information be deleted prior to dissemination to others. Purchasing Sub requests that its name, the name of CCC, address, the location of its facilities, the name of its agent, the names of the municipalities and the name and telephone numbers of its representative be deleted.

We have enclosed copies of relevant documentation for your review.

Please feel free to contact PERSON if you have any questions regarding this matter.

DEPARTMENT'S RESPONSE:

We cannot provide you with the ruling determination you have requested. The purchase of the tangible personal property by CCC is in reality a purchase for use or consumption by CCC. The sale of the equipment and supplies to PURCHASING SUB by CCC and the resale of that same property back to CCC are created as two extraneous steps solely to avoid local occupation taxes or to fix the allocation of the local sales tax portion of the state sales tax to a specific local jurisdiction. The Department will not issue a letter ruling that sanctions this practice under the circumstances described in your letter. Please note that the future scenario described in your letter regarding PURCHASING SUB obtaining the equipment and supplies directly from vendors and then selling that property to CCC may be viewed differently by the Department.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have questions regarding this Private Letter Ruling you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Associate Counsel

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